

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

**FRANKLIN OWENS, and
ANNA OWENS,**

Plaintiffs,

v.

Case No. 3:19-cv-00055

**UNITED STATES OF AMERICA,
Defendant.**

COMPLAINT

NOW COME the Plaintiffs, Franklin Owens and Anna Owens, and for their Complaint against the United States of America hereby state as follows:

PRELIMINARY STATEMENT

1. Franklin Owens, an 83 year old veteran, received grossly negligent medical care at the Huntington VA Medical Center, located in Huntington, West Virginia, beginning on August 21, 2000 and continuing thereafter. Mr. Owens had a colonoscopy performed on August 21, 2000 at which time tubular adenomas were removed. A repeat colonoscopy was supposed to be done within three years. A repeat colonoscopy was not timely done. Mr. Owens had no follow up care until March 25, 2016, at which time other tubular adenomas were found that had turned cancerous.

This lawsuit charges the federal government, and/or their agents, with medical negligence and other torts, based upon their egregious medical negligence in the care and treatment of Franklin Owens.

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper under 28 U.S.C. 1331 and 28 U.S.C. 1391(e)(3).

3. This is an action for medical negligence and other torts, pursuant to 28 U.S.C. §§ 1346 and 2672 (the Federal Tort Claims Act), for failing to provide Plaintiff, Franklin Owens, with proper and adequate medical care and treatment.

4. Compensatory damages are sought pursuant to the Federal Tort Claims Act.

5. All governmental entities were notified of this claim in a timely fashion and all administrative exhaustion and notice requirements under the FTCA have been satisfied and exhausted.

THE PARTIES

6. The plaintiffs, Franklin Owens and Anna Owens, are husband and wife and are and were at all times relevant herein citizens and residents of Logan County, West Virginia.

7. The United States of America (“United States”) is a governmental entity with jurisdiction and control over the Huntington VA Medical Center, (VAMC) located in Huntington, Cabell County, West Virginia. Plaintiff, Franklin Owens was a patient of VAMC receiving care and treatment on or before August 21, 2000 and thereafter.

GENERAL ALLEGATIONS

8. Mr. Owens had a colonoscopy performed on August 21, 2000 at which time tubular adenomas were removed.

9. A repeat colonoscopy was supposed to be done within three years but Defendant, by and through its agents and employees, negligently failed to properly screen Plaintiff, Franklin

Owens and provided no follow up care or colonoscopy until March 25, 2016, at which time other tubular adenomas were found that had turned cancerous.

10. Plaintiff Franklin Owens required colon resection.

11. As a direct and proximate result of the negligence, carelessness, recklessness, and deviation from the appropriate standard of care of the Defendant, by and through its agents, servants and/or employees, Plaintiff, Franklin Owens:

- a. Sustained bodily injuries both temporary and permanent;
- b. Suffered and will continue to suffer in the future physical pain and mental anguish;
- c. Sustained and will sustain in the future disfigurement and deformities;
- d. Incurred and will incur in the future expenses for doctors, institutional care, hospital care, nursing care, medicine, equipment and related items of service;
- e. Sustained and will incur in the future humiliation and embarrassment; and
- f. Suffered and will suffer in the future impairment of his capacity to enjoy life; and
- g. Has suffered a diminished life expectancy.

12. As a further direct and proximate result of the above-listed negligence, wilfulness, wantonness, and reckless disregard on behalf of the defendant, by and through its agents, servants and/or employees, the plaintiff, Anna Owens, as the wife of Franklin Owens, has sustained great and irreparable loss in that she has suffered a loss of comfort, society, convenience, and consortium to and from her husband, Franklin Owens, all of which will continue in the future.

PRAYER

WHEREFORE, the Plaintiffs, Franklin Owens and Anna Owens, do hereby demand judgment of and from the Defendant in this matter, for compensatory damages for economic and non-economic losses, as allowable under the Medical Professional Liability Act, plus an award of prejudgment and post-judgment costs, allowable fees, and such other relief as they may be entitled to receive.

**FRANKLIN OWENS
and ANNA OWENS,
By Counsel**

s/ Woody A. Trent, Esquire.
Woody A. Trent, Esquire
W. Va. State Bar # 8630
Richard D. Lindsay, Esquire
W.Va. State Bar # 10832
Richard D. Lindsay, M.D., J.D
W.Va. State Bar # 2216
Tabor Lindsay & Associates
Post Office Box 1269
Charleston, WV 25325
(Phone) 304-344-5155
(Facsimile) 304-344-5188